THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.18093 of 2006

DATED 15.09.2006

Between:

Kamal Khandelwal. .. PETITIONER

versus

State of Andhra Pradesh,
represented by its Principal Secretary,
Municipal Administration and Urban
Development Authority, Secretariat,
Saifabad, Hyderabad and two others. .. RESPONDENTS

WRIT PETITION NO.18093 of 2006

ORDER:

Heard the learned counsel.

2. This Court ordered Notice Before Admission on 1.9.2006.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in not taking any action on the representations submitted by the petitioner as wholly illegal, arbitrary, unconstitutional and violative of Articles 14 and 21 of Constitution of India and consequently direct the respondents to remove the encroachments on the 50 feet road towards eastern side of the petitioner's property forthwith and pass such other suitable orders.

4. It is stated by the writ petitioner that he constructed a one storied house on an extent of 35 square yards of land and that the house is located on the main road and the house constructed facing the main road and towards south there is a 50 feet lane. It is also stated that at the time of making construction and while obtaining the sanction order, the petitioner was made to surrender around 5 feet of the land for the purpose of road margin and only thereafter permission was sanctioned and accordingly the petitioner constructed the house. It is also stated that on 50 feet by-lane, which leads inside Adilabad town, some slum dwellers had illegally encroached, who are not only staying there in the said encroachment but also regularly causing nuisance. Since there is absolutely no other basic amenities on these Kacha huts, they are even using it for all purposes including natural call etc., and it became a regular nuisance and also causing regular hygienic problems not only to the residents of the locality but also to the children

and it virtually became a health hazard. It is also stated that since there was a regular nuisance in the locality, the petitioner submitted a representation to the 2nd representation on 28.12.2005 requesting to remove encroachments as contemplated under A.P. Municipalities Act, 1965. It is further stated that even after the representation when there was absolutely no response coming forward from the 2nd respondent, the petitioner also made a representation on 27.2.2006 to the 3rd respondent, who is Head of the District and it appears that the 3rd respondent forwarded the petitioner's representation to the 2nd respondent for necessary action and consequently the 2nd respondent vide proceedings ROC.No.G1/124/2006, dated 9.5.2006 asked the petitioner to furnish the documents relating to his ownership, plan etc., enabling the 2nd respondent to verify the details of his property and to take further action. It is also stated that such demand for production of documents may not be of any consequence inasmuch as it is the bounded statutory duty of the 2nd respondent to maintain the roads, road margins free from nuisance, but even though a citizen brings it to the notice of the 2nd respondent the details of the encroachments made by the slum dwellers on the road, unfortunately the 2nd respondent, instead of taking immediate action against the encroachers, he is dodging the issue for obvious reasons. It is also stated that the petitioner by letter dated 10.5.2006 submitted the ownership papers, site plan and permission letter to the 2nd respondent and even after submitting the representations to the respondents 2 and 3, when there was no action by either of the respondents, the petitioner was constrained to submit a representation to the State Government (1st respondent) on 26.6.2006, but unfortunately there is absolutely no response from these respondents.

The petitioner also had referred to Sections 189, 192 and 67 of A.P. Municipalities Act and the duties cast on the municipality in relation to the statutory duties.

5. In the light of the over all facts and circumstances, it appears that the petitioner already made representations to the 2nd respondent on 28.12.2005 and to the 3rd respondent on 7.2.2006 and 27.2.2006. It also appears that in pursuance thereof, the 3rd respondent had issued certain directions and in the light of the same, certain documents relating to the petitioner's property had been produced before the 2nd respondent.

6. Be that as it may, in the light of the facts and circumstances, if there are any such encroachments, the 2nd respondent is bound to take appropriate action in accordance with law in the light of the provisions of A.P. Municipalities Act, 1965, if necessary by putting on notice to the ultimate affected parties. The main grievance of the petitioner is that despite repeated representations, no such steps are being taken. In view of the same and also in the light of the representations already made and some action had already been initiated by making a demand on the petitioner to produce his documents, the 2nd respondent to initiate action and take further steps in this regard in accordance with the provisions of A.P. Municipalities Act. This exercise is to be made as expeditiously as possible at an early date.

7. In the light of the observations made supra, the Writ Petition is disposed of. No costs.

15.09.2006

SSR